Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

DECISION GRANTING COMPENSATION TO SIERRA CLUB CALIFORNIA FOR SUBSTANTIAL CONTRIBUTION TO DECISION 12-05-035

Claimant: Sierra Club California	**For contribution to D.12-05-035**
Claimed ($): $58,173.50	**Awarded ($): $46,861.50** (reduced 19.5%)
Assigned Commissioner: Peterman	**Assigned ALJ: DeAngelis**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision (D.) 12-05-035 adopts a new pricing mechanism (the Renewable Market Adjusting Tariff (under the Feed-in Tariff required by Public Utilities Code § 399.20 enacted by Senate Bill (SB) 380(Kehoe, 2008), SB 32 (Negrete McLeod, 2009) and SB2(1X) .

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	June 13, 2011	Verified
2. Other Specified Date for NOI:		
3. Date NOI Filed:	June 9, 2011	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.10-03-014	Verified
6. Date of ALJ ruling:	November 30, 2010	Verified
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.10-03-014	Verified
10. Date of ALJ ruling:	November 30, 2010	Verified
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-05-035	Verified
14. Date of Issuance of Final Order or Decision:	May 24, 2012	May 31,2012
15. File date of compensation request:	July 30, 2012	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor's Comments	CPUC Discussion
1	The November 30, 2010 Ruling in A.10-03-014 was ruled within one year of the Notice of Intent to Claim Compensation on June 9, 2011.	Verified

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Intervenor's Claimed Contributions	Specific References to Intervenor's Claimed Contributions	CPUC Discussion
1. Sierra Club California contributed several policy principles and recommendations and conclusions of law to the Scoping Ruling, Staff Proposal and Decision, detailed below.	Scoping Ruling Staff Proposal, D.12-05-035 (page numbers relate to Decision unless noted otherwise, *e.g.* "Staff").	Yes
2. Need for expedited briefing schedule reflected in the scoping ruling. Sierra Club California urges, along with…for the Commission to treat implementation of SB 32 and Public Utilities Code § 399.20, as amended, as a top priority. Implementation of this program for standard offer contracts for small-scale renewable energy projects will increase deployment of renewable energy on an accelerated timeline, and with greater certainty of project delivery. This is a key policy tool to developing 12,000 MW of distributed generation by 2020, and Sierra Club California urges a Tier 1 priority level for implementation of the feed-in tariff program. (OIR Reply Comments at 1-2)	July 8, 2011 Scoping Memo at 2-3: **Scope of Issues** There is consensus among the parties that the Commission should address a limited number of critical issues in this proceeding first, recognizing that many important issues will not be in this "highest priority" group.4 Based on the parties' written comments and on discussion at the PHC, I conclude that it is reasonable to consider the following topics in the highest priority group: 4. Implementing new § 399.20, expanding the prior feed-in tariff provisions for RPS-eligible generation.	Yes
3. Legal interpretation of Avoided Cost and Pricing from Sierra Club's OIR Opening and Responsive Comments reflected in ALJ Rulings, Staff Proposal, and Decision. Sierra Club Opening Comments on OIR –	Questions within ALJ Ruling seeking comments on July 21, 2011: "Is there one market price of electricity relevant to all types of electricity procurement or are there different market prices depending on the type of electricity that is being procured?	Yes, but given the voluminous record in this proceeding, Sierra Club should have identified the

"SB X1 2 changed a major factor for the price in a standard tariff from the "market price referent" to "market price." The Commission is directed to consider factors such as "the long-term market price of electricity for fixed price contracts," the "long-term ownership, operating, and fixed-price fuel costs," and "the value of different electricity products including baseload, peaking, and as available electricity."" (At 7.) "Sierra Club California recommends that the Commission define "market price" as "avoided cost" and in doing so to reference the recent FERC rulings clarifying State discretion in defining avoided costs" (At 8.) Setting the market price ceiling is a necessary first step due to the amendment of § 399.20, by SB X1 2, replacing the market price referent with "market price," as defined. Sierra Club California recommended in its opening comments to set and further define market price as "avoided cost," as defined by FERC. (OIR Reply Comments at 2.) "Sierra Club California recommends that the Commission first define ―market price‖ as ―avoided cost‖ and in doing so to reference the recent FERC rulings clarifying State discretion in defining avoided costs.10 By adopting a definition of avoided cost, the Commission achieves the greatest legal certainty that the Commission is in compliance with FERC's Order." (Comments on July 21, 2011 at 6-7. (*See* also at 5-7).)	Based on your definition of ―market price of electricity,‖ explain whether a technology-specific or product-specific proposal is a viable option for the § 399.20 program as updated by the SB 2 1X amendments. Explain the specific methodology and all calculations and data that would be required to implement the technology or product-specific rate that you propose." Staff Interpretation of Statute: "The value of different electricity products including baseload, peaking, and asavailable electricity." (PU Code § 399.20(d)(2)(C)). **Implication**: The CPUC should consider the value of different energy products and set different market prices." (Staff at 5-6.) e. "The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff." (PU Code § 399.20(d)(4)) **Implication**: To ensure ratepayer indifference, the market price should not exceed avoided costs consistent with the Public Utility Regulatory Policies Act of 1978 (PURPA). (Staff at 6.)	documents with specificity. For example, the ALJ Ruling was dated June 27, 2011 and the Staff proposal was issued by Ruling dated October 13, 2011. Yes

"States can establish multi-tiered avoided cost structures that reflect a range of avoided costs based on the specific resources the utility is required to purchase. FERC has held that ―permitting states to set a utility's avoided costs based on all sources able to sell to that utility means that where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement.‖11 In addition, FERC held that ―should California choose to do so, implementation of a multi-tiered avoided cost rate structure can be consistent with the avoided cost rate requirements set forth in PURPA and the Commission's regulations in that such a cost structure would reflect the costs a utility would avoid.‖12 Therefore, California may establish requirements for differentiated generation technologies, and set avoided costs based on these differentiated technologies." (At 7.) *(See* also Sierra Club California April 9. 2012 Comments on the Proposed Decision at 7-8.)	See also Staff citation and discussion of pricing and FERC Clarification Order on Staff at 8. See also Decision discussion of PURPA and FERC Clarification Order on at 11-13.	
4. Policy Principles "Feed-in tariffs offer the proven potential for fast integration of renewable energy, reduced project transaction costs, and increased opportunity for developing small renewable energy projects. In Sierra Club California's Opening Comments in R.08-08-009, Sierra Club urged for (1) prices that are effective for stimulating the broad growth of	Staff: "a. Guiding Principles Staff articulates the following guiding principles to guide development of the Renewable FIT Program: 1. Establish price based on market prices and quantifiable ratepayer avoided costs 3. Create stable and sustainable market and regulatory certainty 6. Ensure administrative ease and lower transaction costs for the buyer,	Yes, and as recognized by Sierra Club, many parties agreed with this approach.

renewable distributed generation, (2) increasing the project capacity limit to 20 megawatts, and (3) for California to develop much more distributed generation than the targets set by SB 32." (July 21, 2011 Comments, at 4.) "With these features and expedited interconnection, a successful feed-in tariff program can lower the costs of a project by lowering the costs of financing and transacting when compared to competitive bidding programs." (July 21, 2011 Comments, at 24).	seller, and regulator 8. Use lessons learned from existing and prior programs to inform program rules 9. Efficiently use existing transmission and distribution infrastructure 11. Ensure all RPS-eligible renewable resources are able to participate 12. Increase probability of successful projects by establishing project viability criteria" (Staff at 6-7.) "Parties commented upon the proposed policy guidelines set forth in the June 27, 2011 ALJ ruling and the Renewable FiT Staff Proposal and, generally, found these guidelines reasonable." (Decision at 19).	
5. Pricing Proposal Reflected in ALJ Rulings, Staff Proposal, and Decision. "Sierra Club California also recommends either: (a) further differentiating such targets by project size and application characteristics, or (b) applying a cost containment mechanism that limits the tariff price to a reasonable cost including reasonable rate of return. This approach is recommended not only to establish a clear avoided cost, but to encourage diversity of energy resources. This diversity helps to promote a balanced portfolio and renewable resources that balance generation and grid operations, and cost containment." (July 21, 2011 Comments at 8). "This strongly suggests that prices	"Option 1: Set Price at MPR Various parties oppose using the MPR to set the FIT price for various reasons. These parties include: AECA, CEERT, CWCCG, DRA, FuelCell Energy,3 SCE, IREC, Sierra Club, and Sustainable Conservation." (Staff at 3.) "Option 3: Set Technology-Specific Prices Based on the Technology Costs Various parties recommend the Commission set the FIT price based on the costs to build, operate, and earn a fair rate of return on each RPS-eligible technology. These parties include: AECA/IEUA, CEERT, CWCCG, Fuel Cell Energy, Sierra Club, Sustainable Conservation, Solar Alliance,6 Placer County, and	Yes, and as recognized by Sierra Club, many parties agreed with this approach.

should be differentiated at least by these three generation qualities of generation, and encourages further differentiation of tariffs for generation technologies based on type and project size. To do otherwise will likely overpay or underpay for different generation products. This approach will allow renewable generation to be purchased at the appropriate price for each category and prevent windfall profits resulting from rates that exceed the cost of production." (July 21, 2011 Comments at 8.)	Renewables 100." (Staff at 3) Cons of Options 1, 2, and 4 listed: "Since price is not based on the actual project's cost, the price may be too high or too low for a specific project. This could result in an unsubscribed program or overpayment to generators." (At 4.) Pros of Option 3 listed: "Price is likely to be high enough to stimulate development of different types of renewable technologies, projects sizes, and geographic locations." (At .) "In the March 2011 briefs and comments filed in July, August, and November 2011, parties, including CEERT, Agricultural Energy Consumers Association and the Inland Empire Utilities Agency, California Wastewater Climate Change Group (CWCCG), Sustainable Conservation, Green Power Institute (GPI), FuelCell Energy, Renewables 100, Sierra Club California (Sierra Club), and Solar Alliance, recommend unique prices for different types of renewable resources." (At 24. CEERT finds that, under existing federal and state law, it is possible for each generation project under the § 399.20 FiT Program to be given a different market price of electricity because according to CEERT, avoided cost can be defined under the law as specific to each resource, technology, and location. CEERT does not, however, recommend that pricing be developed for each	

	individual project. Rather, CEERT recommends that the market price of electricity under § 399.20(d)(1) be differentiated according to resource types, with an avoided cost price determination that reflects the cost of the resource, including the environmental, locational, and supply characteristics of each resource. (At 25.) [Sierra Club California worked closely with CEERT in the research and development of this argument, which is also reflected in Sierra Club California's Comments.] "The parties advocating technology-specific pricing articulate a key challenge in implementing the § 399.20 FiT Program: establishing an avoided cost pricing methodology consistent with the provisions of state law and federal law that supports specific types of renewable technologies, which provide general societal benefits that cannot easily be quantified." (At 33.) "Parties refer to § 399.20(d)(1)46 to support their position on consideration of technology classifications." (At 34.) "Some parties suggested that federal law supports technology-specific prices. While federal law, as discussed above, provides the Commission with the latitude to take into account the state's legislative energy procurement mandates when establishing avoided costs, the state statute, as codified in § 399.20, does not direct the Commission to consider technology-specific costs	

	when determining the § 399.20 FiT Program price." (At 34.) "We do, however, seek to encourage a diversity of technologies through our adopted pricing methodology." (At 35.) "Accordingly, based on the current statutory language, we do not adopt a technology specific set aside for the portion of the 750 MW allocated to the IOUs under this program. We do, however, seek to promote these technologies within the guidelines of the statute." (At 82.) "Today's decision adopts a pricing methodology that relies upon renewable market power pricing information from the RAM adopted in D.10-12-048 and takes components from a number of different pricing proposals presented by parties," "Importantly, we adopt an adjustment mechanism to increase or decrease the FiT price for a particular product type based on market conditions. " (At 38.) "In addition, the Re-MAT's adjustment mechanism seeks to account for any differences in pricing from the RAM Program and the § 399.20 FiT Program by increasing or decreasing the price if the initial price is too low or too high." (At 40.)	
6. Criticism of Use of MPR	"The MPR price may be too high or too low for different FiT product	The decision recognizes the

"While some elements of market price have been quantified within the market price referent, the market price referent is inappropriate as the sole basis of market price, because the legislature expressly deleted the market price referent from § 399.20, and use of the MPR would be inadequate to measure market price and avoided cost." (July 21, 2011 Comments at 14-15.) (*See* also at 16-18): "There is in fact no way to know in advance what natural gas prices will be in the next 10 to 25 years; thus this feature of the MPR is simply a guess. This forecast guess of how much future natural gas prices would be was heavily based upon the current prices for natural gas at the time the forecast was made. This creates a bias in the forecast that increases and decreases the forecast based upon prices in the recent past. …A second problem with the MPR is that it assumes that a natural gas plant can be reasonably assumed to be the basis for calculating the avoided cost for renewable energy. On the contrary, we propose that the MPR cannot be the avoided cost, unless in fact the cost of the renewable energy is avoidable. …A third problem with the MPR is that it did not apply to power from a natural gas plant in the same way it applied to renewable energy. The renewable energy project had to compete with the fictional cost of power from a model natural gas plant. However, a natural gas plant does not fully assume the risk of future price increases in natural gas; that is generally a ―pass through charge. There is no such comparable pass through on wind power contracts. One	types. We also find using the MPR to set § 399.20 FiT Program price fails to achieve our first policy guideline: to "establish a feed-in tariff price based on quantifiable utility avoided costs that will stimulate market demand." The MPR is a price based on a natural gas-fired electric plant, and not a renewable generator. Instead, it reflects the costs of a different energy market, fossil fuels. Specifically, the MPR does not reflect ongoing changes within the renewable market and, as a result, could potentially result in a price either too low or too high. In addition, the renewable market has evolved since the Commission first established the MPR in 2003 at the beginning of the RPS program. Now the renewable market is sufficiently robust to serve as the point of reference for establishing the market price for small renewable projects rather than the very different market used for the MPR, the combined-cycle natural-gas power plant." (At 31.)	contribution of several parties in this regard, CALSEIA, Placer County, Silverado Power, the Solar Alliance, Vote Solar Initiative, Clean Coalition, among others, who all supported a pricing proposal based on adjusting the MPR with some type of adder, for example, an adder based on the attributes of a specific technology type, locational conditions, or environmental societal benefits. "In the above discussion, we decline to adopt a pricing proposal based on the MPR because, in short, the

could argue that the MPR embodied this price risk by assuming all future natural gas purchases are hedged. However, it is not clear if the assumed hedge value is valid, since we don't know the future price of natural gas, especially over a 15 to 25 year period in the future." "Additionally, FERC has ruled that if a state sets a requirement for a new category of generation with certain requirements, that category becomes the new pool of resources in competition and basis for avoided cost. The CPUC should begin with an avoided cost definition of market price, include calculations that have been included within the MPR, include values for time of delivery and locational benefits, and further differentiate those resources by resource type and project size, to determine most appropriate prices and contain costs." (July 21, 2011 Comments at 19.) (*See* also Sierra Club California April 9, 2012 Comments on the Proposed Decision at 9.)		renewable market is sufficiently robust to more accurately reflect generation costs of the FiT Program as compared to the cost reflected in the MPR, that of a natural gas plant. For this same reason, we decline to adopt the MPR aspect of these proposals." (D.12-05-035 at 32.)
7. Price Adjustment Mechanism Toward the need for a price adjustment mechanism: "While a market-based rate is one potential option that could result in lower costs due to the use of competitive auction, this will impose uncertainty and transaction costs, and disadvantage smaller projects." (July 21, 2011 Comments at 23-24). "The staff proposal correctly acknowledges that "since [the] price is not based on the	[Although Sierra Club California's proposals were not accepted in full, elements from Sierra Club's discussion in Comments and in the All-Party meeting such as two month periods, and triggers relating to 50% of allocation for increases and 100% of allocation for decreases were adopted by the Commission.] **"**As stated above, if there are five projects with different developers in the queue for a particular project type and if certain conditions exist, the	Yes

actual project's cost, the price may be too high or too low for a specific project," and "could result in an unsubscribed program or overpayment."14 Sierra Club California stated in Opening Comments that the price structure of the RAM program is biased toward larger projects and may not translate well to an under 3 MW project capacity.15 Adjustments are likely to require collecting similar data, and performing similar analysis, that would be required for a cost-based FIT. Among the factors also built into the RAM market clearing price are that the competitive auction is an incentive for bidders to bid too low, and that projects accepted into the program could fail to secure financing or pencil out, and the market clearing price would have actually been higher, but for the capacity of projects that won the auction but do not complete." (November 2, 2011 Comments on Staff Proposal, at 10). "The price adjustment is a crucial element of the staff proposal for both ensuring that the program can adjust in reaction to market response. Sierra Club California is concerned that the initial price will be too low for most projects, and that the Commission should adjust the price upwards as needed to achieve the intended subscription rates. Likewise, if the program becomes rapidly subscribed, the Commission should gradually decrease the price to ensure overpayment, and to facilitate market transformation to the extent possible." (November 2, 2011 Comments on Staff Proposal, at 15-16.)	Re-MAT price will adjust in the subsequent two-month period. The condition for a price increase is either (1) if no projects subscribe or (2) if program subscription for a two-month period is less than 50% of the initial starting capacity for that project type. There must also be at least five eligible projects from different sponsors in a utility's queue for a product type. The price will increase for each consecutive two-month period until there is subscription capacity equal to 50% or more of the initial starting capacity for that product type. At that point, the price remains the same until the criteria for a price decrease are met." (At 46.) "The condition for a price decrease is if subscription in a two-month period equals 100% or more of the initial capacity allocation for that produce type, regardless of the total available capacity for that product type for the two-month period. The price will stay the same if subscription in the two-month period is less than 100% of the initial capacity allocation for that product type." (At 48.)	

Notwithstanding our strong agreement that the feed-in tariff price should stimulate market demand, we find that the starting price and Re-MAT proposals will be insufficient to do so in a timely and efficient manner, and the Commission should modify the proposed decision and Re-MAT protocols to increase the likelihood of success of the program. (April 9, 2012 Comments on Proposed Decision at 10). "To account for this, Sierra Club proposes modification of the price increase trigger such that the price adjustment will be triggered if the threshold of five eligible projects with different sponsors is achieved, yet less than four sponsors, comprising of projects that amount to at least 3 MW or 50 percent of monthly capacity, whichever is less, for the product type and utility, enter into a FiT contract for at the monthly price, then a price increase will be triggered the following month." (April 9, 2012 Comments on Proposed Decision at 12). There should be clear evidence of market demand beyond just a few market actors. A queue that would automatically subscribe for a full additional month is most likely evidence of an excessive price, and is a better measure of strong demand with reduced risk that a price reduction would curtail the market. We recommend decreasing the price after two consecutive months of full subscriptions. (April 9, 2012 Comments on Proposed Decision at 13.)		
8. Environmental Compliance	"We do not find, however, that	Yes, but

Costs We support the proposals of the County Sanitation Districts of Los Angeles County and FlexEnergy to include adders for compliance costs applicable to the South Coast Air Quality Management District and other applicable AQMDs. We agree that biogas projects in such areas require an additional jurisdictional-specific payment above the ordinary costs of construction and operation. Such an adder is required by the plain language of Section 399.20(d)(1), which states that the payment shall include "environmental compliance costs," including mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located." Without inclusion of such required adders, the program would unreasonably discriminate against projects located in such air districts, where air pollution is worse than other areas of the state. The plain language of the statute functions to ensure that such renewable biogas projects are not burdened by the air pollution offsets required in these air districts for fossil fuel generators. (Sierra Club April 16, 2012 Reply Comments on Proposed Decision at 9).	specific costs, such as compliance costs in a particular air quality management district, are necessarily captured by the RAM methodology. More analysis is needed." (At 42.) "We support these renewable generation industries and their potential to contribute to the reduction of greenhouse gas emissions and improve air quality." (At 51.) "We make this decision with some reluctance as we understand that a price adder is needed, in some instances, to more closely reflect the costs of certain emerging industries. Furthermore, we have heard from parties that, in the absence of such an adder, the growth of these emerging technologies may be hindered." (At 52.) "We find that specific costs, such as the compliance costs in a particular air quality management district, are not necessarily by the RAM pricing methodology. We remain open to adopting specific adders, such as those discussed by the County Sanitation District of Los Angeles County, to reflect compliance costs." (At 53.)	again, other parties contributed to this position, including FlexEnergy and the County Sanitation Districts of Los Angeles County, as Sierra Club recognizes.

9. Ratepayer Indifference "market prices that are equivalent to avoided costs are by definition qualifying as ratepayer indifferent, because a ratepayer would pay an equivalent avoided cost but for the feed-in tariff program." (July 21, 2011 Comments at 28.)	"The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff." (PU Code § 399.20(d)(4).) **Implication**: To ensure ratepayer indifference, the market price should not exceed avoided costs consistent with the Public Utility Regulatory Policies Act of 1978 (PURPA). (Staff at 6.) "Accordingly, we find that the pricing mechanism adopted today complies with "ratepayer indifference" set forth in § 399.20(d)(3) by reflecting the supply and demand of the renewable generation market." (At 61.)	Yes, but this is an issue that other parties, sucy as CEERT and DRA also addressed.
10. Use of Nameplate Capacity Instead of Effective Capacity "The statute defining a project capacity limit refers to ―an effective capacity,‖ of 3 MW as opposed to a nameplate capacity. This would offer the benefit of allowing a large portion of the projects to be larger at a lower cost due to economies of scale and thus lowering the weighted average total costs per KWh under this program to ratepayers. The Commission should investigate the expected effective capacities for eligible technologies, particular the resources with lower effective capacities such as solar and wind, and	"Sierra Club makes a brief argument that the FiT maximum project size should be determined by "the amount of generating capacity that can be reliably generated." Sierra Club, however, does not explain how to determine the amount of capacity that can be "reliably generated" nor does Sierra Club state the benefits of such a policy. Accordingly, we do not adopt Sierra Club's proposal but note that Sierra Club's comments highlight the need for additional clarity around what facilities fall within the 3 MW size limit. Today we clarify that the 3	Yes.

adjust the capacity limit to allow equivalent nameplate capacity projects access to the program. For example, if the Commission finds that solar PV has a typical capacity factor of 25%, then the nameplate capacity limit for solar PV should be expanded from 3 MW effective capacity to 12 MW nameplate capacity." (July 21, 2011 Comments at 30.) "Public Utilities Code § 399.20(a)(1) states that an "electric generation facility" is defined as a facility with an "*effective* capacity of not more than three megawatts."23 The Commission should clarify the staff proposal such that the project size limit is an *effective* capacity of not more than three megawatts. A basic principle of statutory interpretation is that courts should "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."24 A statute must be interpreted "as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."25 It would be an absurd result for the legislature to have included the modifier "effective," in the statute, yet not have intended for this to be given effect. The Commission should give effect to the word "effective" because it is in the plain language of the statute. The Commission must look to the statute's words and give them their usual and	MW AC size limitation corresponds to the nameplate capacity of the facility. (At 65.)	

ordinary meaning.26 It is a "settled principle of statutory construction that a Legislature in legislating with regard to an industry or an activity must be regarded as having had in mind the actual conditions to which the act will apply; that is, the customs and usages of such industry or activity."27 In general, "effective generation capacity" means the amount of generating capacity that can be reliably generated. The "rated" or "nameplate capacity" multiplied by the fraction of capacity considered to be reliable for that type of generation will equal the effective generation capacity. The term "effective capacity" appears in existing standard tariffs, including those associated with SCE Advice Letter 2554-E,28 SDG&E Advice Letter 20429-E,29 PG&E Advice Letter 28026-E,30 and the guidelines for the SCE CREST Program.31 To the extent that the Commission, or the utilities by advice letter, has adopted a method for determining effective capacity, this method should remain unchanged." (November 2, 2011 Comments on Staff Proposal, at 17-18.)		
11. Program Cap Sierra Club California strongly supports increasing the program cap as needed to achievea significant portion of the Governor's goal of 12,000 MW of distributed generation. The appropriate limitation on the Commission's authority is Public Utilities Code 399.15, directing the Commission to establish a cost limitation for the RPS program as a whole. However, the staff proposal indicates for the IOUs to raise the FIT program cap. Instead, the	Staff: "Increasing the Program Cap Regarding party comments to increase the cap beyond the IOUs' share of 750 MW, PU Code 399.15 directs the CPUC to establish a cost limitation for the RPS program as a whole and states that all RPS eligible procurement will contribute to the cost limitation:…*Staff proposal:* Based on the language in 399.15, staff proposes that the IOUs can raise the FIT program cap, but a planning process is necessary to evaluate the costs and	Again, several other parties contributed to this issue, which was not fully adopted by the Commission.

Commission should initiate the proposed planning process to assess increases to the program cap. The staff proposal identifies R.11-05-005 implementation of 399.15 as a potential forum, but the Commission should not restrict which "track" of the RPS proceeding the expansion of the FIT program will appear in. The July 8 Scoping Memo by Commissioner Ferron projects an amended scoping memo on the next round of issues in early 2012, and did not discuss the relationship between the FIT program and the implementation of the cost limitation. Tracks within the proceeding may continue, or may fall off, so to the extent that the Commission does specify an appropriate track, the FIT track should remain open." (November 2, 2011 Comments on Staff Proposal p.16-17)	benefits of increasing the program cap relative to other renewable procurement options and the total RPS program cost limitation. Two forums are: 1) R.11-05-005 implementation of 399.15, which provides parties an opportunity to compare procurement from different renewable market segments in order to determine the best approach and overall cost limitation for the 33% RPS, and 2) the long-term procurement planning proceeding (LTPP),17 which also evaluates the costs of the RPS program. (Staff p.15-16). "We do not adopt the recommendation by some parties, including Vote Solar Initiative, Solar Alliance, Sierra Club, and Clean Coalition, to increase the cap beyond 750 MW. The Legislature created a specific program under § 399.20 limited to 750 MW and this program is, notably, a must-take obligation by utilities and the renewable generation procured under this program has cost implications for ratepayers. Therefore, today we set as our goal implementing the plain language of the statute and the 750 MW cap noted therein…. We are sensitive, however, to the fact that the program's MW may quickly be subscribed. In that situation, we will consider proposals from parties to expand the program. (p.75-76)	
12. Strategically Located The proposed decision adopts conditional requirement for projects to	"To implement our interpretation of subsection (b)(3), we find that if a project's most recent	Yes

be "strategically located," but the definition is vague and subject to abuse. To prevent the program from being unfairly restrictive, Sierra Club supports the staff proposal, which sets a standard that strategically located means projects that interconnect to the distribution grid and comprise in the aggregate with other preexisting projects, 100% or less of the minimum coincident substation load or the distribution circuit has been upgraded to accept two-way electrical flow. This standard is clear for project developers to have certainty when planning projects whether a site is strategically located." (Sierra Club April 9. 2012 Comments on the Proposed Decision at 16-17).	interconnection study shows that the project requires more than $300,000 of transmission system network upgrades, that project is no longer eligible for the § 399.20 FiT Program." (p.58) [Although Sierra Club's proposal was not adopted in full, the Commission modified the proposal from the Proposed Decision to establish a more bright-line approach in the Adopted Decision.]	

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Intervenor's Assertion	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?[1]	Yes.	Verified
b. Were there other parties to the proceeding with positions similar to yours?	Yes.	Verified
c. If so, provide name of other parties: **Comments were filed by SCE, PG&E, SDG&E, DRA, TURN, CEERT, CalSEIA,** SEIA/Solar Alliance, Vote Solar, Clean Coalition, Sustainable Conservation, Silverado Power, and many others.		Verified
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: Sierra Club contacted other parties in the development of comments, and at in-person meetings including the pre-hearing conference and workshops. Sierra Club shared legal research and arguments with parties with similar positions, and participated on conference calls with other parties with similar positions. By working with other parties, Sierra Club identified issues to focus on, and issues that would be covered in greater depth by other parties. Sierra Club worked most		We agree that Sierra Club made a substantial contribution to D.12-05-035, but we cannot agree that the contribution

[1] The Division of Ratepayer Advocates (DRA) was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013), which was approved by the Governor on September 26, 2013.

closely with CalSEIA, SEIA/Solar Alliance, Clean Coalition, CEERT, and Sustainable Conservation. The Commission has encouraged participation of diverse stakeholder groups. Sierra Club was the only broad-based environmental group participating in comments toward this decision, and presented a unique perspective compared to other parties. At different points in the proceeding, Sierra Club worked with CEERT, CalSEIA, and Clean Coalition to coordinate positions to minimize duplication and encourage development of similar elements within positions. Any potential overlap occurring in comments should be outweighed by the unique contributions made by Sierra Club in this Decision.	was unique. We reduce Sierra Club's hours by 20% to account for duplication, as we discuss more fully below.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

a. Intervenor's claim of cost reasonableness:	**CPUC Verified**
Sierra Club California focused its participation on developing a standard-form feed-in tariff (FIT) program to stimulate the market for distributed renewable energy as part of meeting California Renewables Portfolio Standard Program. The benefits of a well-designed FIT include reduced transactional costs, procurement of diverse electricity projects providing unique values to the electricity grid, and distributed generation with avoided transmission and distribution costs. Sierra Club raised points of policy and law to comment on the design of a FIT program that would meet these objectives. Sierra Club also commented on reducing the risk of overpayment for certain market segments.	**Verified**
b. Reasonableness of hours claimed: Sierra Club California participated actively in the proceeding, commenting on nearly each request for comment by parties. This level of comment was required by the unique issues presented by questions related to Section 399.20 and recent legislation, and complex issues involved with designing a feed-in tariff program. This Decision resolves many initial questions involved with establishing a small-scale program, and may lay the groundwork for expanded procurement through standard-form PPAs if the experience is successful. Sierra Club California is claiming a reasonable amount of hours for the work of a lead docket attorney, a senior advocate supervising and reviewing comments, and two experts contributing research on specific issues.	We reduce the hours claimed by Sierra Club by 20% to account for duplication, as we discuss more fully below. With this disallowance, we find the hours claimed are reasonable.
c. Allocation of Hours by Issue 30.6 Hours – General 282.4 – Feed-in Tariff Pricing Issues and Additional Issues	Sierra Club did not allocate its hours to the issues discussed in this intervenor compensation claim, unfortunately. Therefore, we can only reduce the hours on an

	across-the-board basis for feed-in tariff pricing issues to account for duplication. In the future, Sierra Club should carefully allocate its time by issue.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	**Year**	**Hours**	**Rate**	**Basis for Rate***	**Total $**	**Hours**	**Rate**	**Total $**
Andy Katz	2011	179.3	$190	D.12-05-032	$34,067.00	148.8	$190	$28,272.00
Andy Katz	2012	46	$200	D.12-05-032; 2nd Step Increase	$9,200.00	36.9	$195	$7,195.50
Ray Pingle	2011	27	$155	See Comment	$4,185.00	21.9	$125	$2,737.50
Ray Pingle	2012	10.9	$160	See Comment	$1,744.00	8.7	$135	$1,174.50
Robert Freehling	2011	29.3	$165	See Comment	$4,834.50	23.9	$165	$3,943.50
Robert Freehling	2012	9.1	$170	See Comment	$1,547.00	7.3	$175	$1,277.50
Jim Metropulos	2011	8	$115	D.12-05-032; 1st Step Increase	$920.00	6.7	$110	$737.00
Jim Metropulos	2012	5.1	$120	D.12-05-032; 2nd Step Increase	$612.00	4	$120	$480.00
				Subtotal:	**$57,109.50**		***Subtotal:***	**$45,817.50**
**INTERVENOR COMPENSATION CLAIM PREPARATION ** **								
Item	**Year**	**Hours**	**Rate**	**Basis for Rate***	**Total $**	**Hours**	**Rate**	**Total $**
Andy Katz	2012	8	$100	Half of 2012 rate	$800.00	8	$97.50	$780.00

		Subtotal:	**$800.00**	***Subtotal:***	**$780.00**
COSTS					
#	**Item**	**Detail**	**Amount**	**Amount**	
	Postage	Estimate of postage costs – 9 mailings to approximately 10 mail-only parties at a cost of $1.76 each. 1 mailing to approximately 10 mail-only parties of an attachment at a cost of $10.56 each.	$264.00		$264.00
		Subtotal:	**$264**	***Subtotal:***	**$264**
		TOTAL REQUEST $:	**$58,173.50**	**TOTAL AWARD $:**	**$46,861.50**

* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

**Travel and reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

Attorney	Date Admitted to CA BAR[2]	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Andy Katz	December 1, 2009	264941	No

C. CPUC Disallowances and Adjustments:

Attachment or Comment #	Description/Comment
1. 2012 Hourly Rate for **Andy Katz**	Sierra Club seeks an hourly rate of $200 for Andy Katz's 2012 work. The Commission has adopted a 2012 hourly rate of $195 for Katz's work in D.13-12-027 where the experience for Katz presented was substantially similar to those in present in this intervenor compensation claim. The dates in 2012 in which the hourly rate of $195 is applied in D. 13-12-027 coincide with

[2] This information may be obtained at: http://www.calbar.ca.gov/.

	dates of Katz's 2012 work presented in Sierra Club's timesheets for work contributing to D. 12-12-035. We apply the hourly rate of $195 to Katz's 2012 work on D.12-05-035.
2. 2011 and 2012 Hourly Rate for **Robert Freehling**	Sierra Club seeks an hourly rate for Robert Freehling of $165 in 2011 and $170 in 2012. The Commission has adopted a 2011 rate for Robert Freehling of $165 for Freehling's work in D.13-10-068. We apply the hourly rate of $165 to Freehling's work 2011 work on D.12-05-035. No rate has been previously adopted for Freehilng in 2012. Sierra Club requested that Freehling's second and final 5% step increase for the 8-12 year experience range for experts be applied to his 2012 rate. We apply the 2.2% COLA and 5% step increase pursuant to Resolution ALJ-281 to Freehling's 2011 hourly rate of $165 for a new hourly rate in 2012 of $175, rounded to the nearest $5 increment.
3. 2011 and 2012 Hourly Rate for **Ray Pingle**	Sierra Club requests an hourly rate of $155 in 2011 and $160 in 2012 for the work of Ray Pingle, a Lifetime Member of the Sierra Club, as an expert. According to Sierra Club, Pingle developed expertise in Feed-in Tariffs and Renewable Energy and has provided testimony before the CEC and CARB on Feed in Tariffs and renewable energy at workshops. Because of Pingle's background and experience, Sierra Club request that Commission approve hourly rate of $155 and $160 for 2011 and 2012 as a proceeding "expert". Sierra Club also proffers that Pingle has contributed to Sierra Club's California filings before the Commission for the LTPP in 2010 though he was not included in Sierra Club's claim in that proceeding. Pingle has no previous work before the Commission for which he has received compensation. Sierra Club has not made an effort to compare the training and experience of Pingle to any known individuals who have practiced before the Commission and who have received similar hourly compensation for work similar to the work Pingle performed. Mr. Pingle received a degree in dental surgery and most recently worked as a healthcare IT consultant. We have reviewed Pingle's timesheets to examine the work he performed on behalf of Sierra Club. Typically for an expert at the requested hourly rate, we would expect to see the work performed similarly to that of a person with approximately 3 years (mid-point between the 0-6 year experience range) in matters before the Commission, as the hourly rates for the group are $125- $185. Instead of rejecting outright the hourly rate requested for Pingle because of failure to sufficiently justify this rate through his training, Commission experience and comparison to others, we exercise our own independent review of Pingle's timesheets and experience in consideration of the requested rate and conclude that

	is work is more akin to an advocate than an expert. Pursuant to Resolution ALJ-281, we adopt an hourly rate of $125 for Pingle's work in 2011. We apply a 2.2% Cost-of- Living Adjustment to Pingle's 2011 hourly rate, pursuant to Resolution ALJ-281, and the requested first 5% step increase to adopt a 2012 hourly rate of $135.
4. 2011 and 2012 Hourly Rate for **Jim Metropulos**	Sierra Club seeks an hourly rate for Jim Metropulos of $115 in 2011 and $120 in 2012. The Commission has adopted a 2011 rate for Metropulos of $110 for Metropulos' work in D.12-05-032. We apply the hourly rate of $110 to Metropulos' 2011 work on D.12-05-035. No rate has been previously adopted for Metropulos in 2012. Sierra Club requested that Metropulos receive a 5% for the 8-12 year experience range for experts be applied to his 2012 rate. We apply the 2.2% COLA and 5% step increase pursuant to Resolution ALJ-281 to Metropoulos's 2011 hourly rate of $110 for a new hourly rate in 2012 of $120, rounding to the nearest $5 increment.
5. Hourly rate adjustments.	We have made various adjustments to the requested amounts awarded, based on the rates set forth above.
6. Disallowance for duplication of efforts.	Sierra Club has made a substantial contribution to D.12-05-035 but we cannot find that it is a unique contribution. Many parties, including CEERT, Sustainable Conservation, Clean Coalition, Vote Solar Alliance, CalSEIA, County Sanitation District, and AECA, to name a few, provided similar recommendations. While Sierra Club states that "[a]ny potential overlap occurring in comments should be outweighed by the unique contribution made by Sierra Club to the Decision," we must also be cognizant that Sierra Club claimed over 300 hours for participating in this decision and did not properly allocate its hours according to the issues outlined in this intervenor compensation claim. We therefore deduct 20% of all hours claimed for "Implementation of new Section 399.20 Feed-in Tariff." We note that we applied the same methodology to the intervenor compensation awarded to Sustainable Conservation in D.13-10-039. Because Sustainable Conservation allocated its hours more precisely to issues, we were able to make a finer-tuned adjustment for duplication.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No

B. Comment Period: Was the 30-day comment period waived (*see*	Yes

Rule 14.6(2)(6))?	

FINDINGS OF FACT

1. Sierra Club California has made a substantial contribution to Decision 12-05-023.
2. The requested hourly rates for Sierra Club California's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is $46,861.50.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Sierra Club California is awarded $46,861.50.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay Sierra Club California their respective shares of the award, based on their California-jurisdictional electric revenues for the 2011 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 13, 2012, the 75th day after the filing of Sierra Club California's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX
Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** No
Contribution Decision(s):	D1205035	
Proceeding(s):	R1105005	
Author:	ALJ Regina DeAngelis	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
Sierra Club California	07/30/2012	$58,173.50	$46,861.50	No	Reduction in requested hourly rates and reduction for duplication

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Andy	Katz	Attorney	Sierra Club California	$190	2011	$190
Andy	Katz	Attorney	Sierra Club California	$200	2012	$195
Ray	Pingle	Expert	Sierra Club California	$155	2011	$125
Ray	Pingle	Expert	Sierra Club California	$160	2012	$135
Robert	Freehling	Expert	Sierra Club California	$165	2011	$165
Robert	Freehling	Expert	Sierra Club California	$170	2012	$175
Jim	Metropulos	Advocate	Sierra Club California	$115	2011	$110
Jim	Metropulos	Advocate	Sierra Club California	$120	2012	$120

(END OF APPENDIX)